Ellis v. *Waldron,* 19 R. I. 369. Where the relation of passenger and carrier does not exist, several states have by statute raised such a presumption in case of fires set by railway engines. The holding in the principal case would create this presumption in any case of injury by railroads, and this appears to be the rule in Georgia, *Columbus, etc., Ry. Co.* v. *Kennedy,* 78 Ga. 646, and in Mississippi, *Chicago, etc., R. Co.* v. *Trotet,* 60 Miss. 442. The result of this holding is illustrated by the principal case, where plaintiff, though she stepped from behind a wagon directly onto the track, could, by merely showing the injury, compel the defendant to disprove allegations to the effect that the gong was not sounded and that the car was running in excess of the rate of speed, permissible under an ordinance, to the satisfaction of a jury, who must weigh it against a presumption of law, if plaintiff introduces no further evidence.

TAXATION—COMMERCE—DISCRIMINATION AGAINST PRODUCTS OF OTHER STATES.—The city of Memphis sought to tax certain logs, and lumber manufactured therefrom by the defendant, which were cut from the soil of other states and held by the defendant as the immediate purchaser, while such logs and lumber would be exempt from taxation if the product of the soil of Tennessee. *Held,* the tax violates the commerce clause of the United States Constitution by imposing a direct burden upon interstate commerce. *I. M. Darnell & Son Company and H. D. Minor* v. *City of Memphis, and Thomas J. Taylor, Trustee* (1908), 28 Sup. Ct. Rep. 247.

The power to regulate commerce, vested by the Constitution of the United States in Congress, is co-extensive with the subject on which it acts, and can not be interfered with by the states, either directly or indirectly. *Brown* v. *Maryland,* 12 Wheat. 419; COOLEY, TAXATION, 61. Accordingly, a license tax imposed by a state on a dealer in goods which are not the growth, produce, or manufacture of the state, is a tax upon the goods themselves, and, hence, is in conflict with the power vested in Congress to regulate commerce. *Webber* v. *Virginia,* 103 U. S. 344; *Walling* v. *People,* 116 U. S. 446. Also, a tax upon peddlers, who sell merchandise other than products of the state, is unconstitutional. *Ex parte Thomas,* 71 Cal. 204; *Vines* v. *State,* 67 Ala. 73; *Welton* v. *Missouri,* 91 U. S. 275. But, where all peddlers are required to take out a license and pay a tax without regard to their residence or where their wares are produced or manufactured, such a tax is not repugnant to the commerce clause. *Emmert* v. *Missouri,* 156 U. S. 296. A tax on sales at an auction is valid, which applies to all sales, whether made by a citizen of the state or not. *Woodruff* v. *Parham,* 8 Wall. 123. But a tax upon freight transported from state to state, or a tax upon the gross receipts derived from transportation of persons and property by sea between different states and to and from foreign countries, is void. *Philadelphia & Southern Mail and Steamship Co.* v. *Pennsylvania,* 122 U. S. 326; *State Freight Tax,* 15 Wall. 232. A wharfage tax on vessels laden with goods of other states is, likewise, a burden on interstate commerce. *Guy* v. *Baltimore,* 100 U. S. 434. Where goods from another state have become commingled with or a part of the general property of the state, and such goods are taxed

only as part of that general mass in common with all other property within the state, the tax is valid. *Brown* v. *Houston,* 114 U. S. 622. The decision of the court, in the principal case, is clearly correct, for a tax upon the logs and lumber in question, because they were the products of other states, discriminates against the commerce of the other states, and under the authority of decided cases would be a burden on interstate commerce. Although the court considers it unnecessary to discuss the matter, yet it would seem that the tax in question was repugnant to two other clauses in the United States Constitution—(1) Art. 4, Sec. 2, entitling the citizens of each state to all the privileges and immunities of the citizens of the several states; (2) 14th Amendment, prohibiting a state from denying to any person within its jurisdiction the equal protection of the laws. *Ward* v. *Maryland,* 12 Wall. 418; *American Steel & Wire Co.* v. *Speed,* 192 U. S. 500; *State* v. *Hoyt,* 71 Vt. 59; *Fecheimer* v. *Louisville,* 84 Ky. 306. See also 4 MICH. LAW REV. 479.

VENDOR AND PURCHASER—ABATEMENT FOR DEFICIENCY—SPECIAL COVENANTS.—Defendant contracted to convey to plaintiff a tract of land, by special warranty deed, reserving the right and title to himself until the purchase price was fully paid. Prior to the time for conveyance, defendant's title to five acres was divested by a judgment quieting title thereto in a third party. Defendant's title depended on a tax deed, which fact was known to plaintiff at the time the contract was made. A bill in equity was filed to compel a conveyance of the land, deducting a proportionate amount for the five acres. *Held* (CROW and DUNBAR, JJ., dissenting), that complainant is entitled to the relief asked. *Baldwin* v. *Brown* (1908), — Wash. —, 93 Pac. Rep. 413.

The majority opinion holds that the fact that the conveyance was to be made by a special warranty deed, which warrants defects merely occasioned by the grantor, cannot affect the agreement as a contract to convey; as no form of deed is effectual to convey a title where the grantor has none. The dissenting judges criticise this view on the ground that it compels the defendant to perform in the same manner as though he had agreed to execute a general warranty deed. The question seems novel and not exactly passed upon elsewhere. But looked at simply as a contract it was, no doubt, correctly decided. A proportionate amount was properly deducted from the contract price. *Woodbury* v. *Luddy,* 14 Allen 1; *Covell* v. *Cole et al.,* 16 Mich. 223. However, if we look at the agreement and consider that the plaintiff had notice of defendant's defective title and that he would agree only to give a special warranty deed, it seems the price should not be proportioned. Thus, in *The Peoples' Savings Bank Co.* v. *Parisette et al.,* 68 Ohio St. 450, it is said: "Such purchaser contracts with full notice of the uncertainty attending the seller's ability to perform, and, not having been misled to his injury cannot now ask the extraordinary aid of a court of conscience in repairing such loss, if any, as he has sustained by the vendor's failure to complete his contract." To the same effect are: *Knox et al.* v. *Spratt et al.,* 23 Fla. 64; *Riesz's Appeal,* 73 Pa. St. 485.